



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No.: FAA-2011-1136; Notice No. 12-07]

RIN 2120-AJ33

Air Carrier Contract Maintenance Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to amend the maintenance regulations for domestic, flag, and supplemental operations, and commuter and on-demand operations for aircraft type certificated with a passenger seating configuration of 10 seats or more (excluding any pilot seat). The proposed rules would require these operators to develop policies, procedures, methods, and instructions for performing contract maintenance that are acceptable to the FAA and to include them in their maintenance manuals. The rules would also require the operators to provide a list to the FAA of all persons with whom they contract their maintenance. These changes are needed because contract maintenance has increased to over 70 percent of all air carrier maintenance, and numerous investigations have shown deficiencies in maintenance performed by contract maintenance providers. The proposals would help ensure consistency between contract and in-house air carrier maintenance and enhance the oversight capabilities of both the air carriers and the FAA.

DATES: Send comments on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments identified by docket number FAA-2011-1136 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, S.E., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the Federal Register published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Patricia K. Williams, Aircraft Maintenance Division, Air Carrier Maintenance Branch, AFS-330, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone (202) 385-6432; e-mail patricia.k.williams@faa.gov.

For legal questions concerning this action, contact Ed Averman, Office of the Chief Counsel, Airworthiness, Advanced Aircraft, and Commercial Space Law Branch, AGC-210, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC; telephone (202) 267-3147; facsimile (202) 267-5106, email ed.averman@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 447, Section 44701(a)(2)(A) and (B) and (5). Under that section, the FAA is charged with prescribing regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances, and equipment and facilities for, and the timing of and manner of, the inspecting, servicing and overhauling, and prescribing regulations the FAA finds necessary for safety and commerce. This regulation is within the scope of that authority.

In addition, the "FAA Modernization and Reform Act of 2012" (the Act), Public Law 112-95 (February 14, 2012), in section 319 (Maintenance providers), requires the FAA to issue regulations "requiring that covered work on an aircraft used to provide air transportation under

part 121 . . . , be performed by persons in accordance with subsection (b).” Subsection (b), in addition to listing persons authorized under existing regulations, referenced additional terms and conditions in subsection (c) that would apply to persons who provide contract maintenance workers, services, or maintenance functions to a part 121 air carrier for covered work. The Act defines *covered work*, and mandates that the applicable part 121 air carrier must be directly in charge of covered work being performed for it under contract, and that the work be done under the supervision and control of the air carrier. These statutory requirements are addressed in this proposal.

I. Overview of Proposed Rule

The proposed amendments would apply to certificate holders who conduct either domestic, flag, or supplemental operations under 14 CFR part 121, and who conduct either commuter operations or on-demand operations with aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more¹ under 14 CFR part 135, if they contract any of their maintenance, preventive maintenance, or alteration work to an outside source. The amendments would require that each certificate holder who contracts for such work must first have developed policies, procedures, methods, and instructions for the accomplishment of that work. These must ensure that, if they are followed, the work will be performed in accordance with the certificate holder’s maintenance program and maintenance manual. Each certificate holder would also be required to ensure that its system for the continuing analysis and surveillance of that work contains procedures for its oversight. All of these policies, procedures, methods, and instructions would have to be acceptable to the FAA and be included in the certificate holder’s maintenance manual. In addition, each certificate holder who contracts any of

its maintenance, preventive maintenance, or alteration work to an outside source would be required to provide to its local FAA Certificate Holding District Office a list that includes the name and address of each maintenance provider it uses and a description of the type of maintenance that would be performed.

The requirement that any person performing maintenance for an air carrier must follow the carrier's maintenance program is not new—FAA regulations have long required this. For example, § 121.363(b) authorizes a certificate holder to arrange with another person to perform its maintenance,² and the regulation makes clear that doing so does not relieve the carrier from remaining primarily responsible for the airworthiness of its aircraft. Further, § 121.367(a) requires specifically that maintenance performed by either a certificate holder, or by another person, must be performed in accordance with the certificate holder's manual. Similar provisions are found in §§ 135.413 and 135.425. Despite those general requirements, the Department of Transportation Inspector General (IG) had noted lapses in the means to ensure air carrier manuals are followed when contracted maintenance is performed. The deficiencies noted include a lack of guidance and training for the maintenance providers, and insufficient oversight of that maintenance. The IG reports recommended the FAA develop a means to identify these contract maintenance providers so the agency could better target its inspector resources in surveilling air carrier maintenance. In a separate rulemaking the FAA is proposing mandatory training programs for air carrier maintenance that would have to be approved by the FAA.

II. Background

A. Statement of the Problem

¹ For brevity throughout this preamble, we will refer to these aircraft as “10 or more.”

² Throughout this preamble, unless otherwise indicated, when we refer to the generic term “maintenance,” the term is meant to include “maintenance, preventive maintenance, and alterations.”

Over the past three decades, air carrier maintenance has evolved from mostly an “in-house” operation to an extended network of maintenance providers that fulfill contracts with air carriers to perform their aircraft maintenance. The reasons for this shift are many, including air carriers lowering costs by employing fewer maintenance personnel and reducing their inventories of maintenance-related tools, equipment, and housing by allowing others with specialized equipment and expertise to work on their aircraft and its safety-critical components. Thus, air carriers, in making business decisions, have shifted much of their maintenance to contract providers.

By regulation, each air carrier remains primarily responsible for the airworthiness of its aircraft, whether the maintenance is contracted to another person or not. Any person performing maintenance for an air carrier must follow the air carrier’s maintenance manual. (14 CFR §§ 121.363, 121.367(a), 135.413, and 135.425(a).) In addition, each air carrier is required to document in its general maintenance manual, both a listing of persons with whom it contracts maintenance and a general description of the contracted work. (14 CFR §§ 121.369(a), and 135.427(a).)

However, air carrier general maintenance manuals often are geared toward in-house maintenance. They fail to provide the necessary instructions to maintenance providers to enable them to follow the air carriers’ maintenance programs. This is exacerbated when an air carrier’s manual contains proprietary data, or other confidential information that an air carrier may not want to share with a maintenance provider. Often, the maintenance provider may also work on a competitor’s aircraft. Consequently, according to the IG, air carriers often are reluctant to share such information, and therefore, often do not.

In addition, the FAA has found that, although air carriers are required to list their maintenance providers and a description of the work to be done in their maintenance manuals, these lists are not always kept up to date, are not always complete, and are not always in a format that is readily useful for FAA oversight and analysis purposes. The FAA needs this information to be complete and readily available centrally. This data is used by the FAA in planning surveillance of air carrier maintenance programs and determining the extent to which maintenance providers are performing their work according to the air carriers' maintenance manuals. Without accurate and complete information on the work being performed for air carriers, the FAA cannot adequately target its inspection resources for surveillance and make accurate risk assessments.

B. History

In May 1996, employees of SabreTech, a contract maintenance provider to air carriers, placed mislabeled and mishandled oxygen generators into the cargo compartment of a passenger jet. Those mishandled hazardous materials caused a fire in the cargo hold that caused ValuJet Flight 592 from Miami to Atlanta to crash into the Everglades in Florida, taking the lives of all 110 people on board. Since then, the FAA's surveillance of air carrier maintenance and contract maintenance has been a particular area of focus for the Department of Transportation's Office of Inspector General (DOT/OIG). The OIG has been performing investigations and audits of the FAA's safety oversight of air carriers' use of repair stations to perform their maintenance, the use by air carriers of non-certificated repair facilities, and the air carriers' outsourcing of maintenance. In each of those reports (detailed below), the OIG found fault with the FAA's methods of tracking where air carriers perform their maintenance, who performs it, and how it is performed.

A 2003 Department of Transportation IG report³ identified a trend of air carriers increasingly contracting their maintenance to outside sources such as repair stations. The report revealed that major air carriers spent approximately \$1.5 billion on outsourced maintenance in 1996 and approximately \$2.5 billion in 2002. The report attributed the trend to cost savings that can be realized by air carriers contracting their maintenance to outside repair facilities. The report was based, in part, on investigators' visits to several FAA field offices and to 21 repair stations to evaluate the effectiveness of the FAA's oversight of the maintenance work being performed for air carriers. The investigation identified weaknesses in maintenance practices at 15 of the 21 repair stations and concluded that a lack of FAA oversight, especially for repeat issues, contributed to the deficiencies. The IG report made several recommendations on ways the FAA could enhance the effectiveness of its oversight of air carrier contracted maintenance. Among them was that the FAA should develop a process to identify repair stations air carriers use to perform aircraft maintenance, and to target FAA inspector resources based on risk assessments or analysis of the data collected on air carrier maintenance outsourcing practices (Recommendation 2).

In 2005, the IG issued a second report on air carriers' use of outside maintenance providers⁴—this one reporting on the use of non-certificated repair facilities. The report discussed air carriers' use of both non-certificated facilities (*i.e.*, maintenance facilities not certificated by the FAA as repair stations) and individual mechanics hired on a temporary basis. The report echoed a recommendation from the 2003 IG report by recommending that the FAA inventory air carrier vendor lists that include all maintenance providers working on air carrier aircraft and identify non-certificated repair facilities that perform critical or scheduled

³ *Review of Air Carriers' Use of Aircraft Repair Stations*, Report No. AV-2003-047 (July 8, 2003).

⁴ *Air Carrier's Outsourcing Use of Non-Certificated Repair Facilities*, Report No. AV-2006-031 (Dec. 15, 2005).

maintenance (Recommendation 1). The report also recommended that the FAA determine whether air carriers evaluate the background, experience, and qualifications of the temporary maintenance personnel used by the contractors to ensure the work they perform is completed in accordance with FAA and air carrier requirements (Recommendation 7).

The problem areas discussed above were emphasized at Congressional hearings in testimony by the Inspector General in 2007. The Inspector General stated: “If FAA is to achieve the planned improvements in oversight of outsourced maintenance, it will need to obtain definitive data on where air carriers are getting the maintenance performed, including critical and scheduled maintenance work done at non-certificated repair facilities, so that it can focus its inspections to areas of greatest risk.”⁵

In 2008, the IG issued a third related report on air carriers’ outsourcing of maintenance.⁶ The report noted a continuing trend of air carriers outsourcing more of their maintenance. The IG based this report on its review of nine major air carriers, which sent 71% of their heavy maintenance checks to repair stations in 2007—up from 34% in 2003.⁷ The report pointed out the continuing need for better oversight of contract maintenance, both by the FAA and by air carriers, especially when the air carriers are contracting repairs of critical components. In addition, the report found that air carrier maintenance manuals have traditionally been geared toward in-house maintenance, and noted that repair stations may perform work for various air carriers, all with different in-house procedures. In this regard, the report concluded that the FAA should ensure that air carriers provide well-defined maintenance procedures and guidance for their outsourced repairs. The report specifically recommended that the FAA: “Encourage the

⁵ Scovel, Aviation Safety, FAA Oversight of Repair Stations, June 20, 2007, CC 2007-076 Senate Committee on Science, Transportation and Commerce, Subcommittee on Operations, Safety and Security.

⁶ *Air Carrier’s Outsourcing of Aircraft Maintenance*, Report No. AV-2008-090 (Sept. 30, 2008).

industry best practice of using airworthiness agreements between air carriers and repair stations that more closely define maintenance procedures and responsibilities” (Recommendation 7).

Need for the rule

As noted in the IG reports discussed above, air carrier use of contract maintenance providers continues to grow, averaging 64 % of air carrier maintenance costs in 2007. The air carrier regulations have long stipulated that each certificate holder is primarily responsible for the airworthiness of its aircraft, even if maintenance is contracted to another person. (*See* §§ 121.363 and 135.413.) Air carriers cannot abrogate this responsibility. Consistent with this responsibility are the requirements that when persons other than the certificate holder (*i.e.*, contract maintenance providers) perform maintenance for it, the maintenance must be performed in accordance with the certificate holder’s maintenance manual.

Section 121.367 has long required that each certificate holder shall have a maintenance program that ensures that: “Maintenance, preventive maintenance, and alterations performed by it, *or by other persons*, are performed in accordance with the certificate holder’s manual.” (§§ 121.367(a) and 135.425(a)(emphasis added).) And, current § 121.369(b) requires, in pertinent part, that:

The certificate holder’s manual must contain the programs required by § 121.367 that must be followed in performing maintenance, preventive maintenance, and alterations of that certificate holder’s airplanes, including airframes, aircraft engines, propellers, appliances, emergency equipment, and parts thereof...

⁷ The report noted that, “overall, major air carriers outsourced an average of 64 percent of their maintenance expenses in 2007, compared to only 37 percent in 1996.” Report No. AV-2008-090 (Sept. 30, 2008) at p. 1.

A nearly identical requirement is in § 135.427(b). While these requirements may be clear, the specifics of how to achieve the result may not be. As noted in the three IG reports discussed above, the investigators found numerous problems with maintenance being outsourced by air carriers. One conclusion reached by the IG was, as noted above, that air carriers should provide their contract maintenance providers with well-defined maintenance procedures. Implicit is that these procedures would be designed by each air carrier so that its maintenance providers could follow its manual.

The FAA believes that a root cause of this problem may be that many air carrier maintenance manuals were written at a time when maintenance was performed mostly in-house. Thus parts of these manuals may contain proprietary information obtained from various sources, for example, original equipment manufacturer (OEM), Type Certificate (TC) holder, or Supplemental Type Certificate (STC) holder, or the information may have been developed by the air carrier. Because of the proprietary nature of the data, an air carrier may be reluctant to provide its maintenance providers with all of the complete and specific guidance within its maintenance manual. This reluctance by an air carrier to provide the specific proprietary guidance/information may indicate that it does not fully recognize the maintenance provider as an extension of its own maintenance program. In those situations, the maintenance provider may be unable to follow the air carrier's program to the extent required by the regulations.

Repair stations have been frustrated by their inability to obtain the necessary applicable portions of some air carrier maintenance manuals when performing work under contract for them. The repair station regulations require repair stations to follow the maintenance manuals of the air carriers for whom they are doing the work. Section 145.205(a) provides that:

A certificated repair station that performs maintenance, preventive maintenance, or alterations for an air carrier or commercial operator that has a continuous airworthiness maintenance program under part 121 or part 135 must follow the air carrier's or commercial operator's program and applicable sections of its maintenance manual.

It stands to reason that if a repair station must follow the air carrier's or commercial operator's manual in order to comply with this regulation, then the corresponding part 121 and part 135 regulations should require the air carrier or commercial operator to provide the repair station that does the work with the applicable portions of its maintenance manual. This would be consistent with the air carriers' remaining primarily responsible for the airworthiness of their aircraft and the concept that when a maintenance provider performs maintenance for an air carrier, the provider is an extension of the air carrier's maintenance program.

The IG reports placed much emphasis on the need for improved FAA oversight of air carrier contract maintenance. In order for the FAA to improve this oversight, the IG, in 2003, recommended the agency develop a means to identify repair stations that perform maintenance for air carriers. The current regulations require only that air carriers put in their manuals a list of persons with whom they have arranged for the performance of maintenance and a general description of that work. (*See* §§ 121.369(a) and 135.427(a).) Although the FAA may review these manuals, no current rule requires air carriers to keep such a list up to date and to provide it to the FAA in an acceptable format. As explained below, the FAA has found that the lists maintained by air carriers in their manuals in some cases are not readily useful for oversight purposes.

The requirements that an air carrier put in its maintenance manual a list of persons with whom it has arranged to perform maintenance, including a general description of that work, has been in place since at least 1965. As a consequence of the IG reports, between June and September 2010, the FAA did an internal investigation to determine the effectiveness of the requirement that air carriers include in their manual the list of outside maintenance providers. The agency found inconsistent compliance with the rule. Some carriers failed to specify an adequate description of the type of work, and some failed to include the name and address of their maintenance providers, using instead only alpha-numeric designators. This piecemeal and inconsistent availability of the information is not conducive to FAA analysis and targeting of problem areas.

The FAA agrees with the IG's recommendations that the agency should have an accurate, consistent inventory of each air carrier's contract maintenance providers. Such a list would enable the FAA to more accurately assess the risk associated with air carriers increasingly maintaining their fleets by contract maintenance providers. Although the identity of contract maintenance providers is currently available to the FAA through the air carriers' manuals and available upon request, it is not published in a format that readily allows for analysis, as it may be annotated in various formats, and the information is not available to the FAA in a single data base. In accordance with the IG's recommendations, we are proposing this rule so the FAA would have a dedicated and readily available list in an acceptable format of all air carrier contract maintenance providers. These lists would be useful for purposes of FAA analysis and oversight of both the air carriers that contract portions of their maintenance and their maintenance providers. The FAA envisions that this list would be administered via air carriers' operations specifications or through the agency's new safety assurance system that allows each

certificate holder to enter its own data electronically into the FAA system. This would provide the FAA with real time data and assist it in meeting its oversight responsibilities and in making risk assessments.

III. Discussion of the Proposal

Because current FAA regulations do not clearly address air carrier requirements for contract maintenance providers, the resulting lack of standardization makes it difficult for both the air carriers and the FAA to provide meaningful oversight to ensure proper maintenance that is vital for the public's continued safety. Consistent with the IG's recommendations, we propose to address weaknesses in contracted maintenance on two fronts. The first would add consistency and structure to the arrangements air carriers make with their outside maintenance providers, with the goal of ensuring that the air carriers' maintenance manuals would be followed. The second would assist the FAA in its oversight of contracted maintenance by requiring each air carrier that contracts any of its maintenance to provide, and keep updated, a list of those maintenance providers to the FAA. The list would include the physical (street) address where the work would be performed, and a description of the work to be performed by each maintenance provider.

While the current regulations do require that any person (whether certificated or not) with whom an air carrier arranges to perform maintenance must follow the carrier's manual, the requirement is broadly stated and often loosely implemented. In order to assure consistency in any future FAA guidance material, we are proposing in new §§ 121.368 and 135.426 to define a *maintenance provider* as any person (whether certificated or not) who performs maintenance for a certificate holder other than a person who is trained by and employed by that certificate holder. These new sections would also require each air carrier that contracts any part of its maintenance

to a maintenance provider to first have policies and procedures in place to ensure that, if they were followed, the carrier's contracted maintenance would be performed in accordance with its maintenance program and maintenance manual. Proprietary data issues could be addressed by carefully drafted airworthiness agreements between the air carrier and its maintenance provider, as recommended in the 2008 IG report. Each certificate holder would also be required to ensure that its system for the continuing analysis and surveillance of that work contains procedures for its oversight. All of these policies, procedures, methods, and instructions would have to be acceptable to the FAA and be included in the certificate holder's maintenance manual.

For completeness, we are also proposing a new paragraph (b)(10) to current §§ 121.369 and 135.427 (Manual requirements) to include the above requirements for procedures and oversight in the air carriers' maintenance manuals.

We are also proposing in new §§ 121.368 and 135.426 to require each air carrier that contracts any of its maintenance to an outside source to provide to its FAA Certificate Holding District Office, in a format acceptable to the FAA, a list that includes the name and address of each maintenance provider used by that certificate holder under contract, and a description of the work that would be performed. This would enable the FAA to have a meaningful data base that would show who was doing the work for each air carrier and the kind of work being done. This would assist the FAA in its oversight responsibilities, especially in determining which maintenance providers were performing critical maintenance.

The FAA recognizes that operators will need time to fully develop the policies, procedures, methods, and instructions for contract maintenance and to provide them in an acceptable format to the FAA. Similarly, they will need time to prepare the list with the required information of their contract maintenance providers and to provide them in an acceptable format

to their Certificate Holding District Offices. The FAA will also need time to review the information submitted by the operators. In view of these considerations, the FAA is proposing to make the effective date of the final rule one year after its publication. We are requesting public comments on the reasonableness of this one-year “compliance” period, as well as any other aspect of this proposal.

In addition, as explained in the Authority for this Rulemaking section of this preamble, the “FAA Modernization and Reform Act of 2012” (the Act), Public Law 112-95 (February 14, 2012), in section 319 (Maintenance providers), requires the FAA to issue regulations “requiring that covered work on an aircraft used to provide air transportation under part 121 . . . , be performed by persons in accordance with subsection (b).” Subsection (b) of the Act, in addition to listing persons already authorized to perform maintenance under existing regulations, referenced additional terms and conditions in subsection (c) that would apply to persons who provide contract maintenance workers, services, or maintenance functions to a part 121 air carrier for the performance of covered work. The Act defines *covered work* as any of the following: “(A) Essential maintenance that could result in a failure, malfunction, or defect endangering the safe operation of an aircraft if not performed properly or if improper materials are used. (B) Regularly scheduled maintenance. (C) A required inspection item (as defined by the Administrator).” The Act also requires that covered work be carried out under the *supervision and control* of the part 121 air carrier *directly in charge* of the covered work being performed for it by a maintenance provider, and that the covered work be carried out in accordance with the air carrier’s maintenance manual.

In accordance with these statutory requirements, we are proposing to include in

§§ 121.368(a) and 135.426(a) the definition of *covered work* set forth in the statute, and to provide definitions of *supervision and control* and *directly in charge*. The definition of *directly in charge* would be similar to the current definitions in §§ 121.378 and 135.435. As required by the statute, we are also proposing: In §§ 121.368(b) and 135.426(b), that each certificate holder must be directly in charge of all covered work it contracts to a maintenance provider; in §§ 121.368(c) and 135.426(c), that all covered work must be carried out in accordance with the certificate holder's maintenance manual; and in §§ 121.368(d) and 135.426(d), that no covered work may be performed by a maintenance provider unless that work is carried out under the supervision and control of the certificate holder. Although the statute mandates these amendments for part 121 air carriers, the FAA believes that, in the interest of providing an equivalent level of safety for commuter and on demand operations, the same requirements should apply to persons conducting operations under part 135 in aircraft configured with 10 or more passenger seats. Accordingly, we are proposing the changes mandated by the Act for both part 121 and part 135 (10 or more) certificate holders.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S.

standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) has benefits that justify its costs; (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of this Rule

This proposed rule would ensure consistency between contract and in-house air carrier maintenance and assist the FAA in its oversight responsibilities. The DOT IG reports placed much emphasis on the need for improved FAA oversight of air carrier contract maintenance. In order for the FAA to better be able to provide this oversight, the IG, in 2003, recommended the agency develop a means to identify repair stations that perform maintenance for air carriers.

In accord with the IG’s recommendations, we are proposing this rule so the FAA would have a dedicated and readily available list in an acceptable format of all air carrier contract maintenance providers. These lists would be useful for purposes of FAA analysis and oversight of both the air carriers that contract portions of their maintenance and their maintenance providers.

These new sections would also require each air carrier that contracts any part of its maintenance to a maintenance provider to first have policies and procedures in place to ensure that, if they were followed, the carrier’s contracted maintenance would be performed in accordance with its maintenance program and maintenance manual. Proprietary data issues could be addressed by carefully drafted airworthiness agreements between the air carrier and its maintenance provider, as recommended in the 2008 IG report.

In addition, this proposed rule responds to a provision (Section 319 on Maintenance Providers) in the FAA Modernization and Reform Act of 2012 mandating that the FAA issue regulations “requiring that covered work on an aircraft used to provide air transportation under part 121 . . . , be performed by persons in accordance with subsection (b) [of that section].” Subsection (b), in addition to listing persons authorized under existing regulations, referenced additional terms and conditions in subsection (c) that would apply to persons who provide contract maintenance workers, services, or maintenance functions to a part 121 air carrier for covered work. The section defines *covered work*, and mandates that the applicable part 121 air carrier must be directly in charge of covered work being performed for it under contract, and that the work be done under the supervision and control of the air carrier. As already explained under **Discussion of the Proposal** in this preamble, in the interest of providing an equivalent level of safety for commuter and on demand operations, we are proposing the above statutory

requirements for certificate holders operating under part 135 as well as for those operating under part 121.

Over 10 years, the cost to part 121 and part 135 (10 or more) air carriers and the FAA would be approximately \$2.4 million (\$1.6 million, present value at 7%), or essentially minimal cost.

The FAA believes the benefits discussed above have value exceeding the costs.

Who is Potentially Affected by this Rule?

Part 121 and part 135 (10 or more) air carriers.

Assumptions:

- The rule is expected to take effect in 2014. The time horizon for these potential benefits is 10 years, 2014 through 2023.
- All monetary values were expressed in constant 2011 dollars. We calculated the present value of the potential benefit stream by discounting the monetary values using a 7 percent interest rate from 2014 to 2023.
- The FAA identified 301 part 121 and part 135 (10 or more) air carriers that would be affected by this proposed rule.

Benefits of this Rule

This proposed rule would ensure consistency between contract and in-house air carrier maintenance and assist the FAA in its oversight responsibilities. The DOT IG reports placed much emphasis on the need for improved FAA oversight of air carrier contract maintenance. In order for the FAA to better be able to provide this oversight, the IG, in 2003, recommended the agency develop a means to identify repair stations that perform maintenance for air carriers.

In accord with the IG's recommendations, we are proposing this rule so the FAA would have a dedicated and readily available list in an acceptable format of all air carrier contract maintenance providers. These lists would be useful for purposes of FAA analysis and oversight of both the air carriers that contract portions of their maintenance and their maintenance providers.

Although the IG reports discussed earlier dealt primarily with maintenance conducted for part 121 certificate holders, the FAA has found similar problems with maintenance providers not following the maintenance programs of certificate holders conducting commuter and on-demand operations with aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more under part 135. In a similar vein, the FAA has also found that some of these operators conduct insufficient oversight of their maintenance providers. Even before the passage of Public Law 112-95 in February 2012, the FAA was planning to propose rules for both part 121 and 135 certificate holders that would require additional procedures and oversight to help ensure that the certificate holders' manuals would be followed by outside maintenance providers. The statute mandates new requirements for part 121 certificate holders, including that they be directly in charge of what it defines as "covered work." Because the FAA has observed the same types of lapses with maintenance performed for part 135 certificate holders operating aircraft with 10 or more seats, we are proposing the same requirements for these operators. The FAA believes that by requiring part 135 certificate holders to adopt the new part 121 statutory requirements, a higher level of safety would be achieved.

Costs of this Rule

From 2014 to 2023, the cost to part 121 and part 135 (10 or more) air carriers and the FAA would be approximately \$2.4 million (\$1.6 million, present value). The FAA solicits

comments regarding this determination and requests that all comments be accompanied by clear and detailed supporting economic documentation.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA identified a total of 269 small entities out of 301 air carriers that would be affected by this proposed rule. For each of these entities, the FAA attempted to retrieve their annual revenue data from World Aviation Directory. The FAA found data for 36 of the 269 small entities. The FAA then compared their revenue data with their annualized costs. The

projected annualized costs of the proposed rule as a percent of revenue would be less than 1 percent for the 36 small entities, which is not a significant economic impact. Therefore, the FAA certifies this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that the objective is to improve safety: therefore, it would not create unnecessary obstacles to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$143.1 million instead of \$100 million. This

proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA considers the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following proposed amendments to the existing information collection requirements previously approved under OMB Control Number 2120-XXXX. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

Summary: Each operator which seeks to obtain, or is in possession of, an air carrier operating certificate must comply with the requirements of 14 CFR part 121 in order to maintain data which is used to determine if the air carrier is operating in accordance with minimum safety standards. Original certification is completed in accordance with part 119.

Each operator which seeks to obtain, or is in possession of a commuter or on-demand operating certificate must comply with the requirements of 14 CFR part 135 in order to maintain data which is used to determine if the air carrier is operating in accordance with minimum safety standards. Original certification is completed in accordance with part 119.

Continuing certification is completed in accordance with part 121 and part 135. One form is used. The use of this form was taken into account in estimating the burden for this section.

Use: This information collection supports the Department of Transportation's strategic goal of safety. Specifically, the goal is to promote the public health and safety by working toward the elimination of transportation-related deaths, injuries, and destruction of property.

Title 49 U.S.C., Section 44702, empowers the Secretary of Transportation to issue air carrier operating certificates and to establish minimum safety standards for the operation of the air carrier to whom such certificates are issued. Under the authority of Title 49 CFR, Section 44701, Federal Aviation Regulations part 121 and part 135 prescribe the terms, conditions, and limitations as are necessary to ensure safety in air transportation.

Respondents (including number of): There are approximately 94 part 121 air carriers and 207 part 135 operators affected by this proposed rule.

Frequency: The manual requirements will be submitted as part of the submission of maintenance manuals to the FAA for acceptance.

Annual Burden Estimate: The proposed rule would require that the air carrier's manual has all the policies, procedures, methods, and instructions for the accomplishment of maintenance by another person to include the information necessary for certificate holders to ensure all maintenance is performed in accordance with its maintenance program. The proposed rule would also require that the air carrier provides a list with the name and address of each maintenance provider used and the type of maintenance that is to be performed.

Private Sector Costs

The proposed rule would require that the air carrier's manual has all the policies, procedures, methods, and instructions for the accomplishment of maintenance by another person to include the information necessary for certificate holders to ensure all maintenance is performed in accordance with its maintenance program. The proposed rule would also require

that the air carrier provides a list with the name and address of each maintenance provider used and the type of maintenance that is to be performed and updates and maintains that list.

To calculate the cost of revising the manual and revising and maintaining the list, the following assumptions were used, paralleling those in the regulatory evaluation:

- 94 part 121 manuals have to be revised in year 1.
- 207 part 135 manuals have to be revised in year 1.
- 94 part 121 air carriers have to provide a list in year 1.
- 207 part 135 air carriers have to provide a list in year 1.
- Part 121: amount of time revising manual (manager): 4 hours.
- Part 121: amount of time revising manual (technical writer): 40 hours.
- Part 121: amount of time revising manual (editor): 2 hours.
- Part 135: amount of time revising manual (manager): 8 hours.
- Part 121: amount of time to provide the list (manager): 1 hour.
- Part 121: amount of time to provide the list (technical writer): 3 hours.
- Part 121: amount of time to provide the list (auditor): 10 hours.
- Part 135: amount of time to provide the list (manager): 5 hours.
- Parts 121&135: amount of time to maintain list (manager): 6 hours/year.
- Parts 121&135: amount of time to maintain list (technical writer): 6 hours/year.

- Wage per hour for manager: \$69.78.
- Wage per hour for technical writer: \$36.76.
- Wage per hour for editor: \$43.45.
- Wage per hour for auditor: \$49.79.

First Year Costs for Part 121

Cost = 94 x ((4 hours x \$69.78) + (40 hours x \$36.76) + (2 hours x \$43.45) + (1 hour x \$69.78) + (3 hours x \$36.76) + (10 hours x \$49.79) + (6 hours x \$69.78) + (6 hours x \$36.76)) = \$296,454.

Time = 94 x (4 hours + 40 hours + 2 hours + 1 hour + 3 hours + 10 hours + 6 hours + 6 hours) = 6,768.

Subsequent Year Costs for Part 121

$$\text{Cost} = 94 \times ((6 \text{ hours} \times \$69.78) + (6 \text{ hours} \times \$36.76)) = \$60,091.$$

$$\text{Time} = 94 \times (6 \text{ hours} + 6 \text{ hours}) = 1,128.$$

First Year Costs for part 135

$$\begin{aligned} \text{Cost} &= 207 \times ((8 \text{ hours} \times \$69.78) + (5 \text{ hours} \times \$69.78) + (6 \text{ hours} \times \$69.78) + (6 \text{ hours} \times \$36.76)) \\ &= \$320,114. \end{aligned}$$

$$\text{Time} = 207 \times (8 \text{ hours} + 5 \text{ hours} + 6 \text{ hours} + 6 \text{ hours}) = 5,175.$$

Subsequent Year Costs for Part 135

$$\text{Cost} = 207 \times ((6 \text{ hours} \times \$69.78) + (6 \text{ hours} \times \$36.76)) = \$132,329.$$

$$\text{Time} = 207 \times (6 \text{ hours} + 6 \text{ hours}) = 2,484.$$

Total over 10 years

$$\text{Cost} = (\$296,454 + \$320,114 + (9 \times \$60,091) + (9 \times \$132,329)) = \$2,348,351.$$

$$\text{Time} = (6,768 \text{ hours} + 5,175 \text{ hours} + (9 \times 1,128 \text{ hours}) + (9 \times 2,484 \text{ hours})) = 44,451.$$

Average per year

$$\text{Cost} = \$2,348,351 / 10 = \$234,835.$$

$$\text{Time} = 44,451 / 10 = 4,445 \text{ hours}.$$

FAA Costs

The FAA has to ensure that the air carrier's manual has all the policies, procedures, methods, and instructions for the accomplishment of maintenance by another person to include the information necessary for certificate holders to ensure all maintenance is performed in accordance with its maintenance program.

To calculate the cost of revising the manual, the following assumptions were used, paralleling those in the regulatory evaluation:

- 94 part 121 manuals have to be revised in year 1.

- 207 part 135 manuals have to be revised in year 1.
- Part 121: amount of time revising manual (FAA inspector): 1 hour.
- Part 135: amount of time revising manual (FAA inspector): 1 hour.
- Wage per hour for FAA inspector: \$96.14.

First Year Costs for Part 121

Cost = $94 \times ((1 \text{ hour} \times \$96.14)) = \$9,037$.

Time = $94 \times (1 \text{ hour}) = 94 \text{ hours}$.

First Year Costs for part 135

Cost = $207 \times ((1 \text{ hour} \times \$96.14)) = \$19,901$.

Time = $207 \times (1 \text{ hour}) = 207 \text{ hours}$.

Total over 10 years

Cost = $(\$9,037 + \$19,901) = \$28,938$.

Time = $(94 \text{ hours} + 207 \text{ hours}) = 301 \text{ hours}$.

Average per year

Cost = $\$28,938 / 10 = \$2,894$.

Time = $301 / 10 = 30 \text{ hours}$.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the ADDRESSES section at the beginning of this preamble by [\[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER\]](#).

Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street, N.W., Washington, DC 20053.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking.

Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the FOR FURTHER INFORMATION CONTACT section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies or
3. Accessing the Government Printing Office's web page at <http://www.gpoaccess.gov/fr/index.html>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue S.W., Washington, DC 20591, or by calling (202) 267-9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 121

Aircraft, Aviation Safety.

14 CFR Part 135

Aircraft, Aviation Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 41721, 44105, 44106, 44111, 44701- 44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Add new § 121.368 as follows:

§ 121.368 Contract maintenance.

(a) A certificate holder may arrange with another person for the performance of maintenance, preventive maintenance, and alterations as authorized in § 121.379(a) only if all the requirements in this section are met. For purposes of this section—

(1) A *maintenance provider* is any person who performs maintenance, preventive maintenance, or an alteration for a certificate holder other than a person who is trained by and employed directly by that certificate holder.

(2) *Covered work* means any of the following:

(i) Essential maintenance that could result in a failure, malfunction, or defect endangering the safe operation of an aircraft if not performed properly or if improper materials are used;

(ii) Regularly scheduled maintenance; or (iii) A required inspection item on an aircraft.

(3) *Directly in charge* means having responsibility for covered work performed by a maintenance provider. A representative of the certificate holder directly in charge of covered work does not need to physically observe and direct each maintenance provider constantly, but must be available for consultation on matters requiring instruction or decision.

(4) *Supervision and control* means that a representative of the certificate holder must be available to personally observe the covered work being done to the extent necessary to ensure it is being done properly, and when the representative is not physically present to observe the work, the representative must be available for consultation on matters requiring instruction or decision.

(b) Each certificate holder must be directly in charge of all covered work done for it by a maintenance provider.

(c) All covered work must be carried out in accordance with the certificate holder's maintenance manual.

(d) No covered work may be performed by a maintenance provider unless that work is carried out under the supervision and control of the certificate holder.

(e) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must develop policies, procedures, methods, and instructions for the accomplishment of all such maintenance, preventive maintenance, and alterations, and these policies, procedures, methods, and instructions must ensure that, if they are followed, the maintenance, preventive maintenance, and alterations are performed in accordance with the certificate holder's maintenance program and maintenance manual.

(f) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must ensure that its system for the continuing analysis and surveillance of the maintenance, preventive maintenance, and alterations carried out by the maintenance provider, as required by § 121.373(a), contains procedures for oversight of all contracted covered work.

(g) The policies, procedures, methods, and instructions required by paragraph (e) and (f) of this section must be acceptable to the FAA and included in the certificate holder's maintenance manual as provided in § 121.369(b)(10).

(h) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must provide to its FAA Certificate Holding District Office, in a format acceptable to the FAA, a list that includes the name and physical (street) address, or addresses, where the work is carried out for each maintenance provider that performs work for the certificate holder, and a description of the type of maintenance, preventive maintenance, or alteration that is to be performed at each location. The

list must be updated with any changes, including additions or deletions, and the updated list provided to the FAA in a format acceptable to the FAA by the last day of each calendar month.

3. Amend § 121.369 by adding paragraph (b)(10) as follows:

§ 121.369 Manual requirements.

* * * * *

(b) * * * *

(10) Policies, procedures, methods, and instructions for the accomplishment of all maintenance, preventive maintenance, and alterations carried out by a maintenance provider. These policies, procedures, methods, and instructions must be acceptable to the FAA and ensure that, when followed by the maintenance provider, the maintenance, preventive maintenance, and alterations are performed in accordance with the certificate holder's maintenance program and maintenance manual.

* * * * *

**PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND
OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT**

4. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 40113, 44701-44702, 44705, 44709, 44711-44713, 44715-44717, 44722, 45101-451050

5. Add new § 135.426 to read as follows:

§ 135.426 Contract maintenance.

(a) A certificate holder may arrange with another person for the performance of maintenance, preventive maintenance, and alterations as authorized in § 135.437(a) only if all the requirements in this section are met. For purposes of this section—

(1) A *maintenance provider* is any person who performs maintenance, preventive maintenance, or an alteration for a certificate holder other than a person who is trained by and employed directly by that certificate holder.

(2) *Covered work* means any of the following: (i) Essential maintenance that could result in a failure, malfunction, or defect endangering the safe operation of an aircraft if not performed properly or if improper materials are used; (ii) Regularly scheduled maintenance; or (iii) A required inspection item on an aircraft.

(3) *Directly in charge* means having responsibility for covered work performed by a maintenance provider. A representative of the certificate holder directly in charge of covered work does not need to physically observe and direct each maintenance provider constantly, but must be available for consultation on matters requiring instruction or decision.

(4) *Supervision and control* means that a representative of the certificate holder must be available to personally observe the covered work being done to the extent necessary to ensure it is being done properly, and when the representative is not physically present to observe the work, the representative must be available for consultation on matters requiring instruction or decision.

(b) Each certificate holder must be directly in charge of all covered work done for it by a maintenance provider.

(c) All covered work must be carried out in accordance with the certificate holder's maintenance manual.

(d) No covered work may be performed by a maintenance provider unless that work is carried out under the supervision and control of the certificate holder.

(e) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must develop policies, procedures, methods, and instructions for the accomplishment of all contracted maintenance, preventive maintenance, and alterations, and these policies, procedures, methods, and instructions must ensure that, if they are followed, the maintenance, preventive maintenance, and alterations are performed in accordance with the certificate holder's maintenance program and maintenance manual.

(f) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must ensure that its system for the continuing analysis and surveillance of the maintenance, preventive maintenance, and alterations carried out by a maintenance provider under this section contains procedures for oversight of the contracted work, as required by § 135.431(a), contains procedures for oversight of all contracted covered work.

(g) The policies, procedures, methods, and instructions required by paragraphs (e) and (f) of this section must be acceptable to the FAA and included in the certificate holder's maintenance manual as provided in § 135.427(b)(10).

(h) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must provide to its FAA Certificate Holding District Office, in a format acceptable to the FAA, a list that includes the name and physical (street) address, or addresses, where the work is carried out for each maintenance provider that performs work for the certificate holder, and a description of the type of maintenance, preventive maintenance, or alteration that is to be performed at each location. The list must be updated with any changes, including additions or deletions, and the updated list provided to the FAA in a format acceptable to the FAA by the last day of each calendar month.

6. Amend § 135.427 by adding paragraph (b)(10) as follows:

§ 135.427 Manual requirements.

* * * * *

(b) * * * *

(10) Policies, procedures, methods, and instructions for the accomplishment of all maintenance, preventive maintenance, and alterations carried out by a maintenance provider. These policies, procedures, methods, and instructions must be acceptable to the FAA and ensure that, when followed by the maintenance provider, the maintenance, preventive maintenance, and alterations are performed in accordance with the certificate holder's maintenance program and maintenance manual.

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Issued in Washington, DC, on November 6, 2012.

John M. Allen
Director, Flight Standards Service

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